

Internal Revenue Service

Number: **201042019**

Release Date: 10/22/2010

Index Number: 1502.75-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B04

PLR-120888-10

Date:

July 12, 2010

Legend

Parent =

Taxpayer =

Sub 1 =

Sub 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Dear :

This letter responds to a letter dated May 14, 2010, requesting the consent of the Commissioner to file a consolidated return under § 1.1502-75(f)(1) of the Income Tax Regulations. Additional information was received in letters dated June 9, 2010, June 14, 2010, and June 28, 2010. The material information submitted in the request and the later correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Facts

Parent is a corporation incorporated on Date 1, Year 1. On Date 2, Year 1, all of the outstanding stock of Parent was issued to a group of investors (the "Investors"). Also on Date 2, Year 1, all of the common stock of Taxpayer, another newly formed corporation, was issued to Parent and all of the preferred stock of Taxpayer was issued to the Investors. The common stock possessed at least 80% of the voting power and at least 80% of the value of all of the outstanding Taxpayer stock. Parent and Taxpayer are each includible corporations within the meaning of § 1504(b). Also on Date 2, Year 1, Taxpayer acquired 100% of the stock of Sub 1, an includible corporation and common parent of a consolidated group, in a reverse subsidiary cash merger, terminating the Sub 1 consolidated group. Thus, on Date 3, Year 1, Sub 1 and its includible direct and indirect subsidiaries became members of the Parent affiliated group. Both Parent and Taxpayer are pure holding companies.

On Date 4, Year 1, Sub 1 acquired all the outstanding stock of Sub 2, an includible corporation and common parent of a consolidated group, in a reverse subsidiary cash merger, terminating the Sub 2 consolidated group (the "Sub 2 Acquisition"). In order to fund the Sub 2 Acquisition, on Date 4, Year 1, a series of cash contributions were made to Parent and Taxpayer. The Investors contributed cash to

Parent in exchange for additional Parent common stock and to Taxpayer in exchange for additional Taxpayer preferred stock. Parent also contributed cash to Taxpayer. However, Parent did not receive additional Taxpayer common stock in exchange for its contribution. As a result of Taxpayer's failure to issue additional common stock to Parent, after the Sub 2 Acquisition, Parent had less than 80% of the voting power of Taxpayer stock, breaking affiliation between Parent and Taxpayer.

Parent filed a consolidated return for the tax year ending Date 6, Year 1, and for the Year 2 and Year 3 tax years. Notwithstanding that as of the end of the day on Date 4, Year 1, affiliation between Parent and Taxpayer was broken, the return filed for the Parent consolidated group for the tax year ending Date 6, Year 1 included the income of Taxpayer and its direct and indirect subsidiaries (including Sub 1 and its subsidiaries and Sub 2 and its subsidiaries) for the period from Date 5, Year 1 through Date 6, Year 1. Similarly, the return filed by Parent for the Year 2 and Year 3 tax years were filed as consolidated returns, notwithstanding that Parent had no includible subsidiaries at any time during those years. Several years later, Parent discovered that from Date 5, Year 1, onward, Parent had not owned the requisite voting power of Taxpayer needed for Taxpayer and its direct and indirect subsidiaries to be included in the consolidated return for the Parent Group.

Generally, if a consolidated return improperly includes the income of one or more corporations which were not members of the affiliated group then, pursuant to § 1.1502-75(f)(1), the income tax liability of such corporations for the improperly included period is to be determined on the basis of separate returns. However, also pursuant to § 1.1502-75(f)(1), if the improperly included corporations constitute another affiliated group, then, upon application and approval, the income of such corporations may be reported on the basis of a consolidated return. Taxpayer has requested approval for the making of a consolidated return for Taxpayer and its direct and indirect includible subsidiaries for the period Date 5, Year 1 through Date 6, Year 1 and associated rulings.

The period of limitations on assessment under § 6501(a) has not expired for Parent, Taxpayer, or any of Taxpayer's affiliated subsidiaries for the Year 1 tax year or for any later tax year.

Rulings

Based on the facts submitted and the representations made, we rule as follows:

- 1) Taxpayer and Taxpayer's affiliated subsidiaries (the "Taxpayer Group") are permitted to file a consolidated federal income tax return for the tax year beginning Date 5, Year 1, and ending Date 6, Year 1. Section 1.1502-75(f)(1). The Taxpayer Group has a continuing consolidated return filing requirement pursuant to § 1.1502-75(a)(2) for later tax years in which the Taxpayer Group remains in existence.

- 2) Provided that pursuant to ruling 1, above, the Taxpayer Group files a consolidated federal income tax return for the tax year beginning Date 5, Year 1, and ending Date 6, Year 1, the amount of federal income taxes Parent previously paid on a consolidated return basis for the tax year ending Date 6, Year 1, is to be allocated between the Parent Group and Taxpayer Group based upon the respective taxable incomes of the groups. Section 1.1502-75(f)(2). The amount of federal income taxes (including estimated taxes for Year 4) Parent previously paid on a consolidated return basis for the tax years beginning with Year 2 are to be allocated for each year between Parent and the Taxpayer Group based upon the respective taxable incomes of Parent and the Taxpayer Group. Section 1.1502-75(f)(2).
- 3) Parent must amend its consolidated federal income tax return for the tax year ending Date 6, Year 1, to remove the income, gain, deduction, loss, and credit attributable to the Taxpayer Group for the time period beginning Date 5, Year 1, and ending Date 6, Year 1. In addition, Parent must modify its federal income tax returns as filed for Year 2 and Year 3 to file a separate return.

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

Procedural Matters

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)

cc: